



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LVO/150482

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 03, 2013, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on August 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a levy to the Petitioner for an unpaid public assistance debt.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Glennetta Rucker

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On October 23, 2012 and on October 25, 2012, the agency issued a child care overpayment notices to the Petitioner at [REDACTED], [REDACTED] informing her that the agency intends to recoup an overpayment of child care benefits in the total amount of \$3,775.64 for the periods of February 5, 2012 – March 31, 2012 and May 6, 2012 – June 30, 2012. The notices informed the Petitioner of the right to request a hearing by filing an appeal within 45 days of the date of the notice.
3. On November 1, 2012, the agency received returned mail. The agency contacted the client on her cell phone and obtained a new address of [REDACTED], Milwaukee, WI 53233.
4. On November 2, 2012, the agency issued Repayment Agreements to the Petitioner at [REDACTED], Milwaukee, WI 53233.
5. On December 4, 2012, the agency issued a dunning notice to the Petitioner at [REDACTED], Milwaukee, WI 53233.
6. On January 3, 2013 and February 4, 2013, the agency issued dunning notices to the Petitioner at [REDACTED], Lower, [REDACTED].
7. On May 23, 2013, the agency issued a Public Assistance Collection Unit Levy notice to the Petitioner at [REDACTED], Lower, [REDACTED]. The notice informed the Petitioner that a levy was issued to collect delinquent public assistance debts and informed her of the right to request a fair hearing within 21 days of the date of the notice.
8. On June 24, 2013, the Petitioner made a payment of \$50 on her debt. The agency issued a notice to the Petitioner on July 2, 2013 informing her that the remaining balance on her unpaid public assistance debt is \$3,756.34.
9. On July 3, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to AFDC) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Adm. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Adm. Code, §DCF 101.23(10)(b) provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For child care the person must appeal within 45 days of the notice. Once the time limit for appealing is past, the person no longer can appeal whether she owes the amount.

In this case, the Petitioner failed to file a timely appeal on the child care overpayment and on the levy action. With regard to the overpayment notices, the Petitioner testified that she never received the notices because she had moved to a shelter. She also testified, however, that she did become aware of the notices in late October and provided the agency with her new address on November 1, 2012. She did not indicate why she did not file any appeal of the action at that time. With regard to the levy action, the Petitioner

filed the appeal 20 days after the appeal deadline of June 13, 2013. She testified that she received the notice but had no good cause explanation for the late filing.

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. In this case, the Petitioner's appeal is untimely with regard to both the child care overpayment actions as well as the levy action. Therefore, I have no jurisdiction to consider the merits of the case.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of October, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 28, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit